

# EXHIBIT

# 6

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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ANYWHERECOMMERCE, INC. and :  
BBPOS LIMITED :  
Plaintiffs :  
vs. : Civil Docket No:  
INGENICO INC., INGENICO : 1:19-cv-11457-IT  
CORP., and INGENICO GROUP SA :  
Defendants :

-----x

HIGHLY CONFIDENTIAL VIDEO-RECORDED  
VIDEO CONFERENCE DEPOSITION OF  
JENNIFER VANDERHART, Ph.D.

DATE: WEDNESDAY, MAY 4, 2022  
TIME: 10:19 A.M.  
LOCATION: JENNIFER VANDERHART'S RESIDENCE  
VIENNA, VIRGINIA  
REPORTED BY: SUZANNE MARIE ALONA ENDERSON  
Reporter, Notary

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Highly Confidential Video-Recorded  
Video Conference Deposition of  
JENNIFER VANDERHART, Ph.D.  
MAY 4, 2022

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(Exhibits attached to transcript.)

1           A       Again, this is a legal determination. So  
2       that's not -- it's not my -- my -- I haven't been  
3       asked to do that. I don't have the expertise to  
4       do that.

5           Q       Is it fair to say that if a court were to  
6       determine that not all sales of BBPOS products  
7       that incorporate the trade secrets covered under  
8       the license consists a contractual breach, that  
9       your analysis of the damages would change?

10          A       So yes. If I were to include a different  
11       set of products that did not include all the  
12       products that I currently include, the total  
13       amount would change.

14          Q       In accordance with that legal  
15       determination; is that right?

16          A       That would be -- yes. I would not be the  
17       one to determine which products did or did not or  
18       should or should not be included in that analysis.

19          Q       Okay. Let's move to your section 6.2.3.,  
20       indemnification, which starts on page 39.

21          A       Okay.

1           Q     In 97, you have an understanding "from  
2     counsel that Ingenico has incurred legal fees and  
3     expenses for litigation and IPR proceedings  
4     related to products licensed by BBPOS to ROAM,  
5     including between Ingenico and IOENGINE and four  
6     additional matters."

7                     Can you tell me what the basis of -- of  
8     your understanding is?

9           A     Just as I say there, I understand from  
10    counsel.

11          Q     Did you do anything to make an  
12    independent analysis of whether or not the -- this  
13    understanding is correct?

14          A     So I got information on the amounts of  
15    legal fees and expenses. I got a spreadsheet that  
16    specified how much those were. So in terms of  
17    whether or not they incurred legal fees, I  
18    understand that these are ongoing cases. I  
19    didn't -- myself, in an ongoing case, I'm -- I'm  
20    familiar with the legal system. And certainly  
21    legal fees are typically incurred when a legal

1 matter is ongoing.

2 So I -- I'm not sure what -- what I would  
3 have verified other than the fact of there being  
4 legal fees incurred. I -- I feel like I'm  
5 rambling now. I don't know that I'm answering  
6 your question.

7 Q Well, this understanding, it's based on  
8 information that was supplied to you by counsel;  
9 is that right?

10 A The fact that legal fees were incurred is  
11 what understanding, I guess, is my question?

12 Q Well, the understand -- what is the --  
13 what is the -- did you do any independent analysis  
14 of these actual legal proceedings that form the  
15 basis of the indemnification claims here?

16 A So I did look at the IOENGINE litigation  
17 in order to see the type of litigation that it was  
18 and the specific part that was being played by the  
19 products that would be indemnified. And -- but  
20 other than that, the amount of legal fees was --  
21 was given to me by counsel.

1           For the other -- other litigations, my  
2       understanding is that they were to be fully  
3       indemnified. But I did not do any additional  
4       analysis to determine whether or not they would be  
5       fully indemnified. That is a -- a legal  
6       determination. I was asked to just make that  
7       assumption.

8           Q       Okay. Is there anything else that you  
9       would have -- that you would have done to satisfy  
10      yourself that legal fees are appropriately part of  
11      the damages that are claimed in connection with  
12      the indemnification breach of contract claim?

13          A       No. I wouldn't interpret the  
14      indemnification clauses in the contract myself.  
15      So whether or not these litigations are or are not  
16      covered under those indemnification clauses is a  
17      legal determination. I've been asked to assume  
18      here that they were. And -- and I've moved  
19      forward under that assumption.

20          Q       So you did say you did look at the  
21      IOENGINE litigation in some sort of fashion.



1       What -- what, in particular, did you review?

2           A       So as I note here in the -- in the  
3       footnote, I looked at the complaint itself. And I  
4       state here, Since the IOENGINE litigation had  
5       other products than those covered under the  
6       ROAM-BBPOS license, I allocate the total legal  
7       fees associated with the litigation by considering  
8       an equal weight share of the litigation expenses  
9       and fees by product category since the BBPOS  
10      products all fall into one of the categories.

11       Q       Did you undertake any analysis of the  
12      actual amount of accused products involved in that  
13      litigation?

14       A       So if we look at -- let's see. Where do  
15      I cite to? I cite to Exhibit D -- for the accused  
16      products and category, see Exhibit D-10.

17       Q       And Exhibit D-10, it outlines the  
18      products that were accused in that -- in the  
19      IOENGINE litigation; is that right?

20       A       That's correct.

21       Q       Okay. But do you have an understanding

1 of, in total, what the accused products -- what  
2 the accused products would be in that litigation?  
3 Like the number.

4 A So this is based -- if you look at the  
5 footnote in this -- in this Exhibit D-10, I refer  
6 to the -- the answer affirmative defenses and  
7 counterclaims in that product. And these are the  
8 products that are cited to there. So that's --  
9 that's what I used in order to determine the  
10 specific products that were alleged.

11 Q So they're divided into three categories;  
12 is that right?

13 A That's my understanding, yes.

14 Q Okay. And for category 1 which is  
15 identified as the mPOS card readers, there are --  
16 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 -- 11 different  
17 products; is that right?

18 A That's correct.

19 Q And only three of those relate to  
20 products that were sold by BBPOS to ROAM or  
21 Ingenico -- Ingenico. Would you agree with that?

1           A       So I don't know for certain. So I know  
2       that the G3X, 4X and 5X. I don't know if maybe in  
3       the past the G2 may have also been sold by ROAM to  
4       Ingenico.

5           Q       Well, would you agree that BBPOS would  
6       not be responsible for each of these products that  
7       are identified in this one category?

8           A       So I would agree that it could be not all  
9       of these were sold by BBPOS. But in terms of  
10      identifying the costs associated with the  
11      litigation, this category of products included the  
12      BBPOS products. So that's how I've done the  
13      allocation here because those fall into those  
14      categories.

15                 So with the basic, you know, underlying  
16      assumptions that certain of the litigation costs  
17      would have been associated with the categories --  
18      the broader categories themselves, I thought that  
19      this was a reasonable way to estimate the costs.

20                 In addition, this would really  
21      understate, you know, what the incremental value

1 would be associated just for these products. For  
2 instance, if there was a litigation that included  
3 only these products, because some of the work that  
4 has to be done from a legal perspective would be  
5 done no matter how many products are associated in  
6 the litigation.

7 Q Did you do anything to independently  
8 analyze whether or not the cost have been properly  
9 allocated or accurate and reasonable?

10 A That was not my -- I was not asked to do  
11 that, no.

12 Q And the one-third allocation is  
13 appropriate with respect to the underlying  
14 litigation but not appropriate with respect to the  
15 IPR; is that correct?

16 A So the IPR I understood to affect all of  
17 the products. And so, you know, regardless of  
18 whether it was just these products or other  
19 products. So all of the patents associated with  
20 the IPR I understood to -- to be associated with  
21 the -- the BBPOS products.

1           Q     How is that different from the underlying  
2     litigation?

3           A     Well, because the IPR -- you're looking  
4     at just -- you're not looking at -- it's not  
5     product specific. So you're just looking at the  
6     patents that are being asserted. And the patents  
7     were all being asserted against the BBPOS  
8     products.

9           Q     Do you have an understanding of how many  
10    patent infringement claims are comprised of -- of  
11    this category of damages?

12          A     I don't understand the question.

13          Q     Well, you identified the one lawsuit,  
14    right. The I -- IOENGINE litigation. But are  
15    there other litigation matters that you considered  
16    and contribute to this damages figure?

17          A     Yes. And so I -- I list those -- those  
18    matters in -- is it D-12? I'm sorry. In Exhibit  
19    D-13.

20          Q     And did you -- did you review the -- any  
21    of the litigation documents in connection with the

1 other matters that are listed here in D-13, other  
2 than the I -- IOENGINE matter?

3 A No. My understanding was that for the  
4 other matters there was no allocation needed, that  
5 all of the products would be subject to  
6 indemnification.

7 Q All of the accused products in those  
8 matters were related to the devices that were sold  
9 by BBPOS to ROAM or Ingenico; is that right?

10 A Just more generally, my understanding was  
11 that these matters, at least up until the point  
12 where these are smaller amounts, that -- the  
13 allegation is that the entirety of the matter  
14 would be subject to indemnification. I don't -- I  
15 don't know the specifics of that.

16 Q And that was based on information from  
17 counsel; is that right?

18 A That's correct.

19 Q And is that the basis for your assumption  
20 that no allocation would be appropriate for the  
21 remaining four matters?

1           A       That's correct.

2           Q       What is the basis of your understanding  
3       of a possible indemnification obligation owed by  
4       BBPOS with respect to litigation between PayPal  
5       and IOENGINE?

6           A       Well, as I state in my report, "There is  
7       a litigation between PayPal and IOENGINE involving  
8       Ingenico products licensed from BBPOS, where  
9       Ingenico may be required to indemnify PayPal for  
10      fees and costs resulting from the litigation."

11          Q       And it's -- and in 101 of your report,  
12      you say, "A similar allocation of fees and costs  
13      as described for the Ingenico-IOENGINE matter  
14      would [sic] be appropriate in connection with the  
15      PayPal-IOENGINE litigation"?

16          A       I say "could be used," "should amounts  
17      associated with that need to be indemnified." So  
18      yes, in terms of identifying various groups of  
19      products and allocating them that way.

20          Q       You didn't undertake any analysis of  
21      actually counting up the actual accused products

1 at issue in either of the IOENGINE litigation  
2 matters, did you?

3 A So I don't understand -- you keep asking  
4 me that question about the first one, but I went  
5 to G-2, the specific exhibit that I created that  
6 has the products that I assume to be the accused  
7 products. And so there's not that many of them.  
8 I can certainly count them.

9 As to the PayPal matter, no. I haven't  
10 done any further analysis into the PayPal matter.  
11 I simply say that that allocation methodology  
12 could be used in that matter, but I haven't  
13 actually applied that to the PayPal litigation.

14 Q I think maybe I'm -- I'm being too  
15 general when I'm -- I think my -- my -- I think my  
16 questions are -- were being too general. But what  
17 I'm actually trying to ask you is, did you  
18 undertake an analysis that would actually count  
19 each device that would comprise of the devices  
20 identified in all -- in those three different  
21 categories, the number -- like the actual number



1 sold?

2 A Oh, the actual number sold. Well, that's  
3 different. So that would be -- you know, in terms  
4 of the number sold -- and the litigation costs  
5 aren't going to be associated with the number of  
6 devices sold.

7 In term of damages, that's -- in terms of  
8 indemnifying for damages, that's a completely  
9 different thing. And, presumably, the damage  
10 analysis would specify the damages that are  
11 associated with the different products. And then  
12 those -- those amounts could be identified with  
13 specificity.

14 And so at that point in time that  
15 analysis could be done in terms of identifying  
16 the -- the specific damages associated with the  
17 products themselves. But in terms of identifying  
18 the legal costs, that's not -- that wouldn't be a  
19 methodology that I would -- that I would propose  
20 using.

21 Q Why not?

1           A       Because it simply isn't -- isn't  
2       relevant. And so whether or not there is 1,000  
3       units sold or a million units sold isn't going to  
4       necessarily impact the litigation costs  
5       associated. It's going to impact damages for  
6       sure. But the litigation costs associated aren't  
7       necessarily going to change.

8           Q       With respect to 6.3. of your report which  
9       relates to BBPOS tortious interference claim, you  
10      calculate damages associated with sales to any  
11      NAB, which I believe is North American Bancard.  
12      What is the underlying product that informs your  
13      damages figure of \$753,475?

14          A       And so, again, as I've stated, the  
15      information available to me did not break out  
16      customer and product level information. My  
17      understanding is that the sales by BBPOS to North  
18      American Bancard were the products that --  
19      Ingenico was selling them to North American  
20      Bancard.

21                   And North American Bancard basically

CERTIFICATE OF NOTARY PUBLIC

I, Suzanne Marie Alona Enderson, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, or financially or otherwise interested in the outcome of this action.



SUZANNE MARIE ALONA ENDERSON

Notary Public in and for  
the State of Maryland

My ommission Expires: 11/23/2022